

Judge Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID MENDOZA,

Defendant.

NO. CR06-466Z

MOTION TO QUASH MATERIAL
WITNESS ARREST WARRANT
AND ORDER FOR RULE 15
DEPOSITION

Comes now the United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Susan M. Roe, Assistant United States Attorney, respectfully requests that the warrant for material witness Timothy P. Smith be quashed.

The defendant in the criminal matter, David Mendoza, has not appeared in person but has appeared through counsel.

Defense counsel indicates that he does “not have authority to waive Mr. Mendoza's presence at a deposition of Tim Smith. I do not believe that any other measures, such as Mr. Mendoza attempting to appear by video link, are practical or workable.” It appears that defendant Mendoza is out of the district, a warrant has been issued for his arrest, and it is not reasonable to believe that he will appear in person for the deposition of the witness.

1 Neither government nor defense counsel believe that a deposition, taken *prior* to
 2 defendant Mendoza's personal appearance in this matter and without defendant Mendoza
 3 being present, would satisfy the Confrontation Clause of the U.S. Constitution and
 4 *Crawford v. Washington*, 541 U.S. 36 (2004).

5 Since a deposition would not be of use in the trial in this matter, the government
 6 considered whether to ask the court to hold the witness until trial. The government does
 7 not so request because (1) there is no reasonably accurate way to determine when
 8 defendant Mendoza will be arrested, extradited or will voluntarily return to the United
 9 States and (2) it would be grievously unfair to witness Smith to hold him indefinitely.

10 Therefore the government, acting in good faith, moves to quash the material
 11 witness warrant for Timothy P. Smith. The United States has notified Gilbert Levy,
 12 counsel for Mr. Smith, and Jeffrey Robinson and Amanda Lee, counsel for Mr. Mendoza,
 13 of this motion to quash and no objections are made.

14 DATED this 10th of May, 2007.

15 Respectfully submitted,

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 17 JEFFREY C. SULLIVAN
 United States Attorney

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 19 s/ Susan M. Roe
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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Lilibeth D. Margen
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